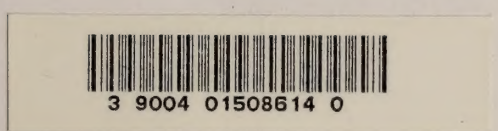

THE FIRST "NEW PROVINCE" OF THE DOMINION

BY

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THE FIRST "NEW PROVINCE" OF THE DOMINION

THE present year is remarkable for a unique series of anniversaries in the history of Western Canada. May 2 was the quarter-millennium of the granting of the Hudson's Bay Charter. April 8 was the centenary of the death of Selkirk, the first to establish permanent settlement, as distinct from the fur-trade, west of the Great Lakes. July 15 was the jubilee of the entrance of Manitoba into the Canadian Confederation.

All three episodes were beset with legal or political controversy; a characteristic of western history that is found to be even more pronounced, perhaps, than the mystery and romance usually associated with vicissitudes of discovery and adventure. The Charter was assailed periodically for two centuries, and it survived largely through sheer longevity and the excesses of its enemies. Selkirk's project, which saved what is now the province of Manitoba from the fate of Oregon, was almost strangled by litigation which not only dwarfed the Red River Settlement for more than a whole generation but sent its founder to an early grave. Similarly, the whole political history of Manitoba, from the Manitoba Act—which was found to be largely *ultra vires* of the Federal Government—to the Remedial Bill and the "Natural Resources Question", has been complicated by constitutional issues of the first magnitude, many of them even yet undetermined. Constitutional principles, as Abraham Lincoln once said of the American Constitution during the Civil War, have "had a rough time of it"; and practically all of these issues are traceable, directly or indirectly, to the conditions under which Manitoba, and indeed the whole of Rupert's Land and the "North-Western Territory", entered the Canadian Confederation in 1870.

Despite the fact that the events of 1870 bear all the marks of haste and unpreparedness, Canadian expansion westward had been generally accepted for nearly fifteen years, in Canada and even in Great Britain, as an inevitable development. Free trade in furs,

conceded at the Red River Settlement after the Sayer trial in 1849, attracted both Canadian and American enterprise until in the year 1856 no fewer than five hundred Red River carts plied between Fort Garry and the American border. In September of that year Vankoughnet, the president of the Canadian Executive Council, declared that the western boundary of Canada ought to be the Pacific, and the suggestion was "echoed throughout the province by the press and by public men of all degrees."[1] Canadian representatives appeared before a sub-committee of the Select Committee of the British House of Commons in 1857, though the impression which they created was not particularly favourable. When the famous *Report* upon the Hudson's Bay Company appeared in that year it was found to contain the recommendation that "the districts on the Red River and the Saskatchewan" should be "ceded to Canada on equitable principles" by "arrangements as between Her Majesty's Government and the Hudson's Bay Company."[2]

The interest in the West during the following decade—too general and too well sustained to be the work, as many professed to believe, of a few enthusiasts—is to be traced in a remarkable variety of activities: surveys for the "Dawson route" to the Red River Settlement, the Hind expedition to report upon the prospects for settlement, the incorporation of the North-West Transit Company, and an attempt to establish a Canadian mail service in 1858. Hitherto the Canadian policy had been directed against the validity of the Hudson's Bay Charter: with something more than disregard for the interests of that Company and with a degree of vehemence which did not inspire confidence in British official circles. In 1859, however, vindication by law was definitely abandoned in favour of political negotiations with the Imperial government. The Canadian executive council, confronted by the necessity of making good their claims by judicial action, declined to "advise steps to be taken for testing the validity of the Charter by *scire facias*".[3] The decision is only partially to be attributed to uneasiness with regard to the outcome, for Confederation was already in the air, and sympathetic parliamentary action was both cheaper and less precarious than litigation. Among the positive as distinct from the negative incentives to Confederation—the

[1] *Report from the Select Committee on the Hudson's Bay Company*, 1857, p. 249.

[2] *Report from the Select Committee*, 1857, p. iv.

[3] *Papers relative to the Hudson's Bay Company's Charter and Licence to Trade*, 1859, p. 5.

constructive attempt to achieve something better as distinct from the attempt to escape from something worse[1]—the prospect of westward expansion to the Pacific was not the least considerable. The last executive council of the old province of "Canada" recorded its conviction (June 22, 1866) that "the future interests of Canada and all British North America were vitally concerned in the immediate establishment of a strong Government there, and in its settlement as a part of the British Colonial System".[2]

When Confederation was finally consummated, provision was made in the British North America Act, 1867, "on address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-Western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act" (section 146). Pursuant to this section of the B.N.A. Act, 1867, the Canadian Senate and House of Commons during their first session (December 16 and 17, 1867) passed a joint address in which they prayed to be allowed to "assume the duties and obligations of government as regards these territories" and urged "the formation therein of political institutions bearing analogy, as far as the circumstances will admit, to those which exist in the several provinces of the Dominion".

Such in very brief outline were the preliminaries to the measures that were taken in 1868 to "admit Rupert's Land . . . into the Union" under section 146 of the B.N.A. Act of 1867 and "subject to the provisions of this Act". It soon became obvious that there were very grave difficulties in the way. One series of difficulties was chiefly constitutional in character, and the discussion of these difficulties naturally took place in London. A second series, chiefly political, came to an issue at the Red River Settlement. A third, chiefly legal and statutory, centred naturally at Ottawa. The nature of these difficulties and the various expedients by which they were eventually overcome would seem to warrant examination in some detail, because it is scarcely too much to say that these have altered profoundly, not only the amplitude, but in some respects the very nature, of the Canadian Confederation.

[1] "Danger of impending anarchy."—Sir John A. Macdonald. "We cannot go back to chronic sectional hostility and discord."—George Brown. "We would be forced into the American Union."—Taché.

[2] Quoted afterwards with significant approval by the Colonial Office, Granville to Young, Nov. 30, 1869, *Correspondence connected with Recent Occurrences in the North-West Territories*, 1870, p. 139.

I. THE CONSTITUTIONAL DIFFICULTIES

The chief constitutional difficulties arose from the divergent views of the three chief parties to "the transfer".

Throughout the developments hitherto the attitude of the Hudson's Bay Company seems to have been regarded as a secondary consideration: a fact which is not altogether to be explained by the vehemence of Canadian claims or the apathy of the British government. The old Company had been bought in 1863 by the International Financial Company, with Sir Edmund Head himself as the new Governor. It was argued, not without a measure of justice, that the purchase of Hudson's Bay stock with full knowledge of the conditions weakened very materially any claim which the old Company might have advanced for special consideration.

The *Prospectus* of the new directorate in 1863, however, announced a radically new policy of "colonization under a liberal and systematic scheme of land settlement" and "in accord with the industrial spirit of the age". It was the first official avowal of settlement, as distinct from the fur-trade of the Company, since the death of Selkirk. A resolution of the committee in August, 1863, was "intended to indicate their desire for the establishment of a Crown Colony in this portion of their territory". As late as February, 1869, in fact, the Governor of the Company informed the Colonial Office that "they still believe that this would be the most satisfactory plan that could be pursued, and they are prepared to discuss it with Her Majesty's Government if they are encouraged to do so".[1] Had this course been pursued—had Assiniboia, like Prince Edward Island and British Columbia, been in a position to enter Confederation after negotiations upon terms mutually satisfactory to both parties—many of the bitterest controversies of the last fifty years might have been avoided. The proposals of the Company in 1864, however, included the retention of an extensive proprietary interest in the land,[2] and this suggestion the Colonial Office very justly refused to entertain. The

[1] Northcote to Rogers, Feb. 26, 1869, *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 38.

[2] Letters from the Company dated Apr. 13 and Dec. 7, 1864, and from the Colonial Office, Mar. 11, Apr. 6 and June 6, 1864. "The compensation should be derived from the future proceeds of the lands, and of any gold which may be discovered in Rupert's Land, coupled with reservations of defined portions of land to the Company."—*Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 22.

chief reasons are stated to Sir Edmund Head in terms which leave nothing to be desired: "In an unsettled colony there is no effectual mode of taxation for purposes of government and improvement, and the whole progress of the Colony depends on the liberal and prudent disposal of the land. . . . It is clear that colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community".[1]

The failure of negotiations in 1864 and the evidence that the new Canadian Confederation had the support of the Colonial Office in aspiring to a transcontinental Dominion resulted in a complete change of front, therefore, on the part of the Company when negotiations were resumed in 1868 for the transfer of Rupert's Land and the "North-Western Territory" to the new Confederation. There was a natural reluctance amounting to a decided refusal to accede to the transfer upon the basis of the B.N.A. Act of 1867 (section 146) alone, since this would have left the chartered rights of the Company in Rupert's Land, for which compensation was not unjustly demanded,[2] to the tender mercies of Canadian courts. The attitude of Chief Justice Draper during the controversies of the fifties did not promise a very sympathetic regard for the claims of the Company, and it was not difficult in 1868 to adduce evidences of deliberate design from the speeches of Canadian statesmen.

The Company, therefore, was inclined to insist upon something more tangible than "such terms and conditions as are in the Addresses expressed" by the Canadian Houses of Parliament or even such "as the Queen thinks fit to approve, subject to the provisions of this Act". The Colonial Secretary[3] indeed made it clear to the Canadian government, in a despatch which deserves the most careful consideration, that the Colonial Office not only conceded the point but contemplated an Imperial bill to safeguard the Company:

> The Company have held their Charter, and exercised privileges conferred by it, for 200 years, including rights of government and legislation, together with the property of all the lands and precious metals; and various eminent law officers, consulted in succession, have all declared that the validity of this Charter cannot justly be disputed by the Crown. . . .

[1] *Correspondence relating to the Surrender of Rupert's Land*, 1869, Appendix iii, p. 68.

[2] Cf. the views of the Colonial Secretary quoted below. *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 12.

[3] The Duke of Buckingham and Chandos.

> I have, on behalf of Her Majesty's Government, called upon the Company to state the terms upon which they would be prepared to surrender to the Crown whatever rights they have over the lands and precious metals, including the rights of government. . . .
>
> I propose to introduce a Bill into the Imperial Parliament. . . . authorising the subsequent transfer to the Canadian Government of the rights and powers to be acquired by the Crown in respect to Government and property, in accordance with the prayer of the Address.
>
> With respect to the North West Territory, the same obstacles do not exist to the transfer of the greater part by the Crown to Canada at the present time. . . .[1]

It thus came to pass that the original instrument of cession (the B.N.A. Act of 1867, section 146) was supplemented by the Rupert's Land Act of 1868, providing specifically for two things: (*a*) the surrender of chartered rights in Rupert's Land to the Crown "upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company", and (*b*) that by Imperial Order in Council, Rupert's Land "shall, from a Date to be therein mentioned, be admitted into and become a Part of the Dominion of Canada".[2] It is to be observed that the second of these merely confirms the B.N.A. Act of 1867, section 146, while the first relates only to the surrender of the Company's chartered rights to the Crown, a transaction in which Canada is as yet in no way concerned. The Canadian delegates, Cartier and McDougall, pointed out emphatically that the Rupert's Land Act "was not introduced at the instance or passed in the interest of the Canadian Government", and that it "placed the negotiations of the terms of surrender by the Company to the Crown in the hands of Her Majesty's Government where . . . we are of opinion it must remain".[3]

The Rupert's Land Act, therefore, was designed to secure compensation for the Hudson's Bay Company for the surrender of chartered rights to the Crown. With regard to the form of that compensation, the Company had developed very decided views. The retention of proprietary rights over the land had long since been abandoned as a result of the negotiations of 1864. At the half-yearly meeting of Hudson's Bay shareholders during the

[1] Duke of Buckingham to Viscount Monck, Apr. 23, 1868, *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 12.

[2] 31 & 32 Vic., c. 105, ss. 3 and 5.

[3] *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 44.

summer of 1868, the demand was formulated for "the payment, as compensation, of a sum of hard money", the sum of "one million sterling, in bonds" being mentioned by the Company's officials as a settlement which "might be acceptable to our proprietors".[1] It was thus that the demand for "compensation" for the surrender to the Crown came to complicate the constitutional procedure for the other two parties to the transfer.

The second party in the case, the Imperial government, sought to play throughout a detached and judicial role. There is discernible a very marked inclination to shift the burden of responsibility for the West to the shoulders of the young Dominion, and the chief concern of the British government seems to have been to effect the transfer with the maximum of speed and the minimum of friction. The rights of the Hudson's Bay Company in Vancouver Island by the Letters Patent of January 13, 1849, had been re-purchased in 1867 for £57,500.[2] The money had been paid by the British Treasury, and the colony proceeded to develop towards responsible government with all its natural resources at its disposal. The provision in the Rupert's Land Act for the surrender of Hudson's Bay chartered rights in Rupert's Land to the Crown "upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company", seemed to imply the same procedure with regard to Rupert's Land. The Canadian delegates, as already noticed, were not backward in suggesting as much to the Colonial Office, but they discovered with some dismay that the British government expected the parental obligations which the mother country had discharged towards Vancouver Island to be discharged towards Rupert's Land by the new foster-parent. When the Rupert's Land Act, which was introduced in the House of Lords, reached the House of Commons, it was amended by a very significant proviso which has supplied the cause—or rather, it must be said, the pretext—for a whole half-century of mischief. The section (31 &

[1] Kimberley to Rt. Hon. C. B. Adderley, Oct. 27, 1869, *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 25.

[2] "In consideration of the sum of fifty-seven thousand five hundred pounds, so paid by or on behalf of Her said Majesty to the said Company . . . they the said Company do for themselves and their successors by these presents, grant, convey, yield up and surrender unto Her said Majesty, Her Heirs and Successors, all that the said Island called Vancouver Island, together with all Royalties of the Seas . . . and all mines Royal, and all rights, . . . and appurtenances whatsoever to the said Island."—*Indenture of April 3, 1867*. Report on British Columbia, *Can. Sessional Papers*, 1872, No. 5, Paper No. 10, Appendix TT, p. 237.

32 Vic., c. 105, s. 3) providing for the surrender to the Crown "upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company" was amended by the stipulation that "no Charge shall be imposed by such Terms upon the Consolidated Fund of the United Kingdom".[1]

It became evident, therefore, that if "the payment, as compensation, of a sum of hard money", was indispensable for the surrender of the Company's chartered rights in Rupert's Land to the Crown, and if this "payment" was to involve "no Charge . . . upon the Consolidated Fund of the United Kingdom", it would be necessary for Canada to undertake the compensation of the Hudson's Bay Company. *Hinc illae lacrymae;* and it is not difficult to trace the reluctance with which this was undertaken by the third party in the case.

From the date of the abandonment of judicial proceedings by *scire facias* in 1859, the "Canadian" government, and after 1867 the government of the Dominion, had consistently contended for the direct cession of Rupert's Land to Canada by Imperial Order-in-Council without reference to the claims of any third party in the case. The Canadian delegates, in a memorandum approved by the Canadian Privy Council, December 28, 1867, expressed "the opinion of the Canadian Government, that it is highly expedient that the transfer which the Imperial Government has authorized, and the Canadian Parliament approved, should not be delayed by negotiations or correspondence with private or third parties".[2]

The Canadian delegates, as already indicated, declined from the first all responsibility for the terms of surrender by the Company to the Crown: the Rupert's Land Act had "placed the negotiations . . . in the hands of Her Majesty's Government where . . . we are of opinion it must remain." The "Terms and Conditions" of surrender to the Crown, therefore, were drawn up categorically by the Colonial Office and forced upon both parties by more than gentle pressure.[3] To the end, Canada continued to demand "either the immediate transfer of the sovereignty of the

[1] *Hudson's Bay Company Bill (H.L.) Commons Amendment.* Ordered to be printed, 23rd July, 1868. The Rupert's Land Act received the royal assent, July 31, 1868.

[2] "Whose position, opinions, and claims have heretofore embarrassed both Governments in dealing with this question."—*Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 3.

[3] *Correspondence relating to the Surrender of Rupert's Land*, 1869, pp. 40-45.

whole territory, subject to the rights of the Company, or a transfer of the sovereignty and property of all the territory not heretofore validly granted to, and now held by, the Company under its charter." [1]

When the amount of the pecuniary "compensation" for the surrender to the Crown was finally fixed at £300,000, the payment was regarded by the Canadian delegates as a species of settlement by compromise out of court. In their acquiescence in t he proposals of the Colonial Office, the payment to the Hudson's Bay Company is referred to as the "cost of legal proceedings necessary, if any be necessary, to recover possession . . . Compromises of this kind are not unknown in private life, and the motives and calculations which govern them may be applicable to the present case."[2]

Nowhere, perhaps, was the whole transaction more succinctly described in its constitutional aspect than by the Canadian delegates themselves: "The surrender of the powers of government and of territorial jurisdiction by the Company to the Crown, and the transfer of these powers to the Canadian Government, are acts of State, authorised by Imperial Statute, and will have all the force and permanence of fundamental law." [3]

Despite the constitutional difficulties, therefore, by which the whole transaction was beset, the actual transfer took place with scrupulous regard for sound British constitutional procedure. The deed of surrender from the Company to the Crown is dated November 19, 1869. It was provided by the Rupert's Land Act, section 4, that "Upon the Acceptance by Her Majesty of such Surrender, all Rights of Government and Proprietary Rights, and all other Privileges, Liberties, . . . whatsoever granted . . . to the said Governor and Company within Rupert's Land . . . shall be absolutely extinguished."

The deed of surrender was received by the Colonial Office on May 9, 1870, and upon the same day Sir John Rose, on behalf of Canada, was "requested to pay over the sum of 300,000*l.* to the Company." [4] The receipt of the payment (from Messrs Baring and Glyn) was acknowledged by the Company on May 11.[5] The

[1] *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 37.

[2] Cartier and McDougall to the Colonial Office, Feb. 8, 1869, *Report of Delegates appointed to negotiate for the Acquisition of Rupert's Land and the North-West Territory*, Ottawa, 1869. This report was formally approved by Order in Council, May 14, 1869.

[3] *Correspondence relating to the Surrender of Rupert's Land*, 1869, p. 45.

[4] Rogers to Lampson, *Recent Disturbances in the Red River Settlement*, 1870, p. 214.

[5] Lampson to Under-Secretary for the Colonies, *Recent Disturbances in the Red River Settlement*, p. 214.

surrender was formally accepted by the Crown "under the Sign Manual and Signet" on June 22, 1870. The cession to Canada was effected on July 15 in pursuance of another Imperial Order-in-Council, dated June 23, 1870. Upon June 22, therefore, Rupert's Land must be regarded as passing from the proprietary control of the Company, and entitled, first under Imperial control and after July 15 as a part of the Dominion of Canada, to all fundamental British rights and privileges "as a part of the British Colonial System." [1]

In view of the importance of these facts for the prairie provinces of Canada, one or two observations with regard to these constitutional difficulties, as a whole, may not be out of place. It is seen that the only part of the whole transaction which involved compensation of any kind was the surrender of Hudson's Bay chartered rights in Rupert's Land to the Crown. Canada was coerced (by the amendment to section 3 of the Rupert's Land Act) into making that compensation, since the Dominion was assuming the obligations with regard to Rupert's Land usually discharged by the United Kingdom and just discharged, for instance, with regard to Vancouver Island. Rupert's Land, therefore, came to Canada not by "purchase" from the Hudson's Bay Company, but by cession from the Crown by "acts of State, authorised by Imperial Statute," and with "all the force and permanence of fundamental law." By the surrender to the Crown the old system of proprietary administration was (by the Rupert's Land Act) "absolutely extinguished." The object of that surrender was not the perpetuation of that proprietary administration in Rupert's Land "for the purposes of the Dominion," [2] instead of for the purposes of the Hudson's Bay Company, but rather "its settlement," as the Canadian executive council had begged and the Colonial Office had enjoined, "as a part of the British Colonial System." The cession to Canada left all the constitutional implications of that system unimpaired.

Since the granting of "responsible government" the implications of the "British Colonial System" have been so uniformly recognized and applied that the prairie provinces of Canada alone, among all the self-governing provinces and Dominions of the British Empire, constitute the actual exceptions to their operation.

[1] Granville to Young, Nov. 30, 1869, quoting the Order-in-Council of the Province of Canada, June 22, 1866.—*Correspondence connected with Recent Occurrences in the North-West Territories*, 1870, p. 139.

[2] Manitoba Act, 33 Vic., c. 3, s. 30.

A province which in the process of self-government relieved the Crown of the burdens of local administration was entitled to all the resources of the Crown for that purpose. "Full rights over the lands" were thus concomitant with responsible government in all the original provinces of Canada.[1] Those rights of provincial control of the public domain were safeguarded in section 109 of the B.N.A. Act of 1867. The same rights have been recognized in the cases of all other provinces which have since entered Confederation. In the case of the prairie provinces alone, as Keith points out, Canada "has not adopted British ideas in dealing with the land;" and the Dominion "manages to control lands despite the existence of the provinces . . . in a way which would never have been possible to an Imperial power which had no direct share in the ordinary government of the country."[2]

The tradition of the "purchase" of Rupert's Land by the Dominion, therefore, is seen to be unwarranted either in actual fact or in legal fiction. There would seem to be no parallel to such a conception in British constitutional procedure; and the half-century of traditional "possession" by Canada of "property," "purchased," "owned" and "administered by the Government of Canada" (as provided in the Manitoba Act) "for the purposes of the Dominion" has not unnaturally been regarded as an unwarranted violation of fiduciary obligations which the Dominion had assumed with regard to Rupert's Land "as a part of the British Colonial System" and "in conformity with the equitable principles which have uniformly governed the British Crown."

It is a remarkable fact that the first overt act of the Dominion, after assuming these functions of parental government, was to appropriate by federal statute the public domain of the new province of Manitoba "for the purposes of the Dominion."

II. THE POLITICAL DIFFICULTIES

A second series of difficulties—chiefly political in character—was encountered in the local opposition to the transfer at Red River.

Without magnifying the specific aims of Riel and his associates in the Insurrection of 1869-70, it will be admitted that the views of the inhabitants of "Assiniboia" had received very scanty con-

[1] Keith, *Responsible Government in the Dominions*, ii, 1047.
[2] Keith, *Responsible Government in the Dominions*, ii, 1051, 1053.

sideration. They had been disposed of very much as Sir Anthony Absolute wished to dispose of Mrs. Malaprop's niece in marriage to his son; if the Captain was to get the fortune he must "have the estate with the live stock upon it as it stands." A small but aggressive Canadian party at the Settlement had been advocating "Canadian Union" unceasingly for ten years, but with such vehemence and indiscretion as to antagonize the most influential elements of the community. By 1870 the great mass of the inhabitants regarded with uneasiness the prospect of domination by those whose countrymen at Red River no longer possessed their confidence.

The Hudson's Bay officials could scarcely be expected to be enthusiastic. Even in 1863 they had viewed the sale of the Company to the International Financial Company with deep indignation. "The Hudson's Bay men," wrote Hargrave, regarded the new Governor at the Settlement "as being with all his ability not much better than a 'greenhorn.' "[1] When the news of an early transfer to Canada reached Red River, it was received by the Company's men with something like consternation. The Chief Factors and Chief Traders, deprived of their accustomed prestige in the community, received no share either of the pecuniary "compensation" for the surrender to the Crown or of the "one-twentieth part" of each township "within the Fertile Belt" reserved to the Company at the transfer. Governor McTavish passed through Ottawa, and was not impressed by the solicitude of the Canadian government. "These gentlemen," he wrote, "are of opinion that they know a great deal more about the country than we do." The truth was that the Hudson's Bay officials had been ignored both by the Dominion and by those in London from whom they had a right to expect greater consideration. Of all the changes of fortune wrought by the transfer, theirs was perhaps the most considerable. With one or two conspicuous exceptions, however, they were by no means favourably disposed towards Riel and his associates. There is abundant evidence that "Company's men" had everything to lose and nothing to gain by the Insurrection.[2] Archbishop Machray, in a confidential report which is perhaps the most convincing and well-balanced of all the contemporary records of the Insurrection, suggested that "most undeserved suspicion has been thrown out upon Gentlemen whose reports could have been thoroughly relied upon . . . I am

[1] *Red River*, p. 259.

[2] Cf. Dr. Cowan's *Diary* at Fort Garry, in the Canadian Archives.

perfectly sure that no dissatisfaction of the employees of the Hudson's Bay Company had anything to do with these troubles."

The attitude of the Company's officials was reflected in that of the majority of the old English-speaking settlers whose traditional attachment to the Company had been fortified by interest, by intermarriage, and by deliberate policy. The old settlers "never had any doubt that the matter would soon right itself," [1] but there was naturally little enthusiasm for the transfer. The whole circle of Hudson's Bay influence, unattracted and in some cases antagonized by the Canadian party at the Settlement, contented itself with acquiescence; and acquiescence was unjustly stigmatized by the Canadians as "cowardice" in the face of Riel's truculent domination at Fort Garry, and was stigmatized in turn by the French as a betrayal of the traditional "neighbourliness and good feeling" which had obtained hitherto among the older settlers of Assiniboia.

It will not be necessary to trace in detail the course of the Riel Insurrection, but the political difficulties at Red River undoubtedly arose from the French and Roman Catholic section of the community; and French obstruction to the Union in 1869-70 has undoubtedly left its mark upon the subsequent political history, not only of Manitoba, but of the whole Dominion.

The policy of building up a smaller Quebec upon the banks of the Red River had been patiently and successfully pursued for more than fifty years. The French *Métis*, the chief charge of a devoted clergy, had not lost the characteristics which Ross had attributed to the preceding generation. They were "generous, warm-hearted and brave, and left to themselves, quiet and orderly." Living still largely by the buffalo hunt, their credulous good-nature and their very improvidence left them responsive to clerical control. They were correspondingly dependent upon their clerical guardians for knowledge and counsel. By 1869 they had become thoroughly alarmed by the changing order of the times. *The Nor'Wester* predicted imminent changes "before the march of a superior intelligence." The *Métis* sought to "raise some breakwater" against the deluge. They were "uneducated, and only half civilized," said Riel before the Council of Assiniboia on October 25, 1869, "and felt, if a large immigration were to take place, they would probably be crowded out." They had been "sold like so many sheep" and disposed of "like the buffaloes on

[1] "They certainly never did anything to give a beginning to the French action."—*Archbishop Machray.*

the prairie." The Canadian Confederation was but two years old, and the French, even of Quebec, were anxiously testing out their provincial rights in the new Dominion. Neither the Roman Catholic clergy nor the primitive people beneath their control at the Red River could be expected to welcome Canadian domination "without safeguards." The *Métis*, suspicious and unenlightened, were easily moved to something more than passive resistance beneath the vainglorious leadership of Louis Riel—a resistance which on more than one occasion passed beyond control and finally degenerated into wanton arrogance and bloodshed. The brains of the movement, however, were not those of Louis Riel; and it would not be unjust perhaps either to the French *Métis* or to their guardians in all that was well-ordered and sustained in the Riel Insurrection, to regard the *Métis* as the secular arm of the Church at Red River.

The ultimate aims of the Roman Catholic clergy were undoubtedly more comprehensive than reserves of land for the *Métis*. Archbishop Taché, on his way to Rome in 1869, wrote bitterly to Sir George Cartier of the "ruin of that which has cost us so dear." "I have always feared," he wrote, "the entrance of the North-West into Confederation, because I have always believed that the French-Canadian element would be sacrificed; but I tell you frankly it had never occurred to me that our rights would be so quickly and so completely forgotten." [1] In Archbishop Taché's absence the French cause was left largely in the hands of the Rev. J. N. Ritchot of St. Norbert,[2] and it is not difficult to trace the influence of Père Ritchot's subtle and resourceful mind throughout the Insurrection itself and upon the negotiations culminating in provincial status under the Manitoba Act.

Neither Canada nor the Colonial Office, it would seem, had contemplated the immediate establishment of provincial institutions in Rupert's Land. Joseph Howe, then Secretary of State for the Provinces, instructed the Hon. William McDougall, as governor of the new territory, to promise a "liberal constitution" as soon as "the wants and requirements of the Territory" should be known. Howe visited Red River in person in October, 1869, and assured the inhabitants that "the same Constitution as the

[1] Dom. Benoit, *Vie de Mgr Taché*, vol. ii, p. 7.

[2] Père Ritchot had arrived from Canada in 1862. He had represented the diocese of St. Boniface at a council at Quebec as late as 1868.—Benoit, *Vie de Mgr Taché*, vol. i, pp. 478, 573.

other provinces possessed would ultimately be conferred upon the country." [1] Even the inhabitants at Red River were not at first in favour of provincial organization, and in fact decided against it upon the only occasion when they were formally consulted upon the matter. At the convention of both English-speaking and French that met at Fort Garry in February, 1870, to discuss with Donald Smith, afterwards Lord Strathcona, as Canadian Commissioner, the terms of union with Canada, Riel inquired "if the Canadian Government would consent to receive them as a Province," and Smith replied that "it had not been referred to when I was at Ottawa." Two "lists of rights" were drawn up by the committee for discussion before the convention, one upon the basis of territorial and the other of provincial status. When Riel's proposal for the discussion of the provincial terms was put to the vote (February 4, 1870), it was decidedly defeated,[2] and despite the vehement opposition of Riel and the French *Métis*, the Commissioner proceeded to discuss the terms of territorial status. The English-speaking population of Assiniboia long remained in ignorance of the influences which resulted in provincial status under the Manitoba Act.

These influences were undoubtedly French and Roman Catholic in origin, and their cogency is very easily understood. Special terms of union, safeguarding by statute the official use of the French language, separate schools, control of lands by the local legislature, etc., were much more enduring guarantees of French claims than the most explicit declaration of policy. When three delegates, in pursuance of Commissioner Smith's invitation, left for Ottawa in March, 1870, the "list of rights" drawn up upon the basis of provincial organization by the committee of the convention of February, 1870, but neither approved nor even discussed by the convention as a whole, was printed by Riel in French and dated "Maison du Gouvernment, Fort Garry, le 23 Mars, 1870." Under the erroneous impression, shared even by the Governor-General,[3] that this list formed the basis of negotiations for the Manitoba Act at Ottawa, it was printed in English in the British blue-book *Recent Disturbances in the Red River*

[1] *Recent Disturbances in the Red River Settlement*, 1870, p. 51.

[2] *New Nation*, Feb. 11, 1870.

[3] The Governor-General refers to this list as a "Copy of the terms and conditions brought by the Delegates from the North-West which have formed the subject of Conference."—Young to Granville, April 29, 1870.

Settlement, 1870.[1] In the first clause of this list the demand is formally advanced for the first time:

> 1. That the Territories, heretofore known as Rupert's Land and North-West, shall not enter into the Confederation of the Dominion of Canada, except as a Province, to be styled and known as the Province of Assiniboia, and with all the rights and privileges common to the different Provinces of the Dominion.

The Manitoba Bill was drawn up in Ottawa in consultation with the three delegates, the Rev. J. N. Ritchot, Judge Black, and Alfred Scott. The negotiations, however, in which Père Ritchot came to wield preponderating influence, were based upon a "list of rights" which would seem to establish the French origin of the Manitoba Act beyond reasonable doubt. The discussion at Ottawa was based neither upon the list which Commissioner Smith discussed before the convention in February, 1870, nor upon that which was drawn up at the same time for provincial status and thrown out by the convention without discussion. The Manitoba Act was based upon a secret "list of rights" (drawn up at Bishop's Palace, St. Boniface) which remained practically unknown to the English-speaking inhabitants of Manitoba for nineteen years, until it was published by Archbishop Taché at the height of the controversy over the "Manitoba School Question."[2] This list contained for the first time, for instance, the demand (the seventh in the list) which formed the basis of the famous school clause (section 22) of the Manitoba Act.[3] Indeed the Governor-General informed the Colonial Office by cable on April 11, 1870, *fifteen days before the opening of negotiations* at Ottawa between the Dominion Government and the three delegates from Red River, that "Bishop Taché, before leaving Ottawa, expressed himself quite satisfied with the terms accorded to himself and his church." It is reasonable to suppose that a general understanding had been reached at Ottawa upon the Archbishop's return from Rome. After his return to Red River the Insurrection was reduced, with some difficulty, to clerical control. "I saw myself

[1] *Recent Disturbances*, p. 130.

[2] Archbishop Taché's letters, *Winnipeg Free Press*, Dec. 27, 1889; *Weekly Free Press*, Jan. 16, 1890. "Sir Geo. Cartier told me how the Government of Ottawa was embarrassed and annoyed when the delegates refused to negotiate on the Bill of Rights prepared by the Convention." Cf. Rev. J. N. Ritchot to Archbishop Taché, Jan. 13, 1890: "That list was the only basis of our negotiations."—*Ibid.*

[3] "That the schools be separate and that the public money for schools be distributed among the different denominations in proportion to their respective population according to the system of the Province of Quebec."

the document [the secret list at Bishop's Palace] handed over to Rev. Mr. Ritchot and Judge Black," wrote Archbishop Taché at a later date, "by the officials of the Provisional Government." [1] It would seem to be unnecessary to inquire further into the origin of the Manitoba Act, and particularly of the sections which were so ruthlessly assailed during the political controversies of 1889-90.

One other section of the Manitoba Act would seem to require special notice. In the haste with which the measure was drafted and passed into law—only sixteen days intervened between the opening of negotiations on April 26 and the passing of the Act—it is obvious that mature consideration upon all points was out of the question. Upon one point, however, for reasons that will appear presently in the discussion of the statutory or legal difficulties of the transfer, there was no wavering of opinion on the part of the Dominion. By section 30 of the Manitoba Act it was provided that "all ungranted or waste lands in the Province shall be, from and after the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion."

Now it is interesting to observe that upon no single question were the delegates so well-armed with mandates from the inhabitants at Red River as upon the question of the control of the public lands. No fewer than four "lists of rights" had been drawn up by various parties at various times during the transfer, and in each case the demand was formulated for local as distinct from federal control. This is true not merely of the "French" lists of December 1, 1869, February, 1870 (on the basis of provincial status) and the "secret list" of March, 1870, in which the demand is made (clause 11) "that the Local Legislature of this Province shall have full control over all the lands of the North-west." [2] It is conspicuously true of the list drawn up on the basis of territorial status in February, 1870, and discussed in detail before the Convention by Commissioner Smith. In this list the claim is advanced (clause 17) "that the Local Legislature of this Territory have full control of all the public land inside a circumference, having Upper Fort Garry as the centre; and that the radii of this circumference be the number of miles that the American line is distant from Fort Garry." Commissioner Smith replied in part that "full and substantial justice will be done in

[1] Letter of Mgr Taché, *Weekly Free Press*, Jan. 16, 1890.
[2] Letter of Mgr Taché, *Winnipeg Free Press*, Dec. 27, 1889.

the matter."[1] In the one "list of rights" to which the inhabitants at Red River as a whole can be said to have given their approval, the demand for the control of the public domain even under territorial status is thus made in the most explicit terms.

The opposition of the delegates at Ottawa to federal control of public lands, however, was speedily removed by the adroit offer of the Dominion government to grant 1,400,000 acres of land "for the benefit of the families of the half-breed residents."[2] There were practical considerations, to be noted presently, which made the policy of the Dominion almost inevitable. The fact remains, however, that in respect of public lands the Manitoba Act contravened every formal expression of opinion, both English-speaking and French, in every "list of rights" drawn up at Red River during the process of transfer. Both the British and Canadian authorities, moreover, refused to regard the Manitoba Act as "subject to confirmation by the 'Provisional Government'" since this "would have involved a recognition of Riel and his associates."[3] Manitoba was thus unique among the provinces of Canada in that many of the terms of union were imposed upon the inhabitants of the new province not only without their consent, but even without their knowledge.

The political difficulties of 1870 were thus surmounted only by mortgaging the future; and the foreclosure has been attended by political controversies many of which have not even yet been composed. Between the claims of the French party at Red River and the exactions of the Federal Government at Ottawa, it will be admitted that provincial rights have indeed "had a rough time of it." Many singular revenges of fortune have followed the "settlement" of 1870. The federal party which was responsible for it was driven from power in 1896 on the "Manitoba School Question," while with respect to the "Natural Resources Question" the prairie provinces are still awaiting a deliverer.

[1] *New Nation*, Feb. 11, 1870.

[2] 33 Vic., c. 3, s. 31. Cf. Archbishop Taché's letter, *Winnipeg Free Press*, Dec. 27, 1889: "To condone for this refusal (of the 'control of all the lands of the Northwest' by the Local Legislature) they gave to the children of the half-breed inhabitants of the country one million four hundred thousand acres of land, which had not been asked for, and with the understanding that by and by they would also give some lands to the parents of these children and to other old settlers."

[3] Letter of Sir Clinton Murdock, confidential representative of the British government, Apr. 28, 1870.

III. THE STATUTORY OR LEGAL DIFFICULTIES

The third series of difficulties was constitutional in the narrower sense of that word—in a sense so much narrower than the unwritten constitutional principles underlying the "British Colonial System" as a whole that these difficulties might perhaps be termed statutory or legal. They naturally followed the transfer of the political conflict from Red River to Ottawa for the framing of the Manitoba Act. They arose from the apparent necessity for immediate legislative action under circumstances which warranted the doubt as to whether that action was either advisable in itself or *intra vires* of the federal government. The advisability of immediate provincial organization was chiefly a political question and was determined, as already indicated, largely as a result of the Riel Insurrection. The constitutionality of the Manitoba Act was another matter, and the influences which determined—or failed to determine—this point centred naturally at Ottawa.

The controversy turned upon the nature and principles of the British North America Act of 1867; and the significant words of Lord Haldane in the recent *Manitoba Initiative and Referendum Case* (6 Geo. V., c. 59) before the Privy Council may be cited as one of the tersest authoritative pronouncements with regard to that great measure:

> The scheme of the Act passed in 1867 was thus, not to weld the Provinces into one, nor to subordinate Provincial Governments to a central authority, but to establish a Central Government in which these Provinces should be represented, entrusted with exclusive authority only in affairs in which they had a common interest. Subject to this each Province was to retain its independence and autonomy, and to be directly under the Crown as its head. Within these limits. . .its local Legislature, so long as the Imperial Parliament did not repeal its own Act conferring this status, was to be supreme.[1]

Now by the B.N.A. Act of 1867, section 146, the statutory authority for the admission of "Rupert's Land and the North-Western Territory, or either of them, into the Union" is defined as being "subject to the provisions of this Act," namely, with the provinces in certain respects (such as the control of public lands, for instance) enjoying "supreme" powers "directly under the Crown." Sir

[1] *Law Journal Reports*, Nov. 1919, p. 145.

John A. Macdonald, in a memorandum for the Canadian Privy Council, December 29, 1870, conceded that "even if the terms of the Address (specified in the B.N.A. Act, 1867, section 146) had included a new constitution for the North-West it must, under the above cited section, have been subject to the provisions of the Imperial Act of Union."[1] The right, therefore, of the federal government alone to legislate for the creation of a new province, with provincial disabilities in certain fundamental respects at complete variance with the principles of the B.N.A. Act of 1867, was questioned from the first in several very important particulars. The right of "giving a constitution to a portion of Rupert's Land," permitting the free exercise of responsible government, seems to have passed without question; but during the discussion of the legal aspects of the Manitoba Bill before the House of Commons in May, 1870, it seems to have been generally agreed that "especially those of its provisions which gave the right to the Province to have Representatives in the Senate and House of Commons of the Dominion" were technically at least *ultra vires* of the federal government, even though no new principles had been introduced in that respect into the general scheme of Confederation.

In several other respects, however, the Manitoba Act had departed very radically from the recognized principles of the B.N.A. Act of 1867, and was far from being "subject to the provisions of this Act." It has been held, for instance, by eminent constitutionalists both then and since, that section 30 of the Manitoba Act providing for the administration of public lands "by the Government of Canada for the purposes of the Dominion" violated one of the most important of all the provisions of the B.N.A. Act of 1867, section 109, safeguarding for all the provinces of Canada without exception the full beneficial control of the public lands within their boundaries. There is a sense, indeed, in which this feature of the B.N.A. Act of 1867 was not only important, but fundamental. The control of "clergy reserves" and crown lands by the province of Upper Canada had formed one of the chief incentives and no small part of the practical results of the conflict for responsible government, and it was responsible government which made possible a voluntary federation of self-governing provinces aspiring to the destiny of a transcontinental Dominion.

[1] *Can. Sessional Papers*, 1871, Vol. 5, Paper No. 20.

Throughout the voluminous discussions, therefore, of the legal or statutory aspect of the question ever since the time of Confederation there has been a succession of eminent constitutionalists —from Edward Blake, the law officers of the Crown in Great Britain, and Sir Oliver Mowat to Chief Justice Haultain and Sir Robert Borden—who have upheld the inherent and fundamental rights of provinces in this respect under the original principles of the B.N.A. Act of 1867. During the discussion of the Alberta and Saskatchewan Acts in 1905 it was stated that the Manitoba Act was "*ultra vires*—was so considered by the legal advisers of the Crown in England, and in order to make it valid it was necessary to pass the Imperial Act of 1871." [1] Indeed one of the most vigorous protagonists of provincial rights in respect of public lands[2] is content to base the cause of the prairie provinces upon the purely legal aspects of the case.

It is evident at any rate that the constitutional principles embodied in the B.N.A, Act of 1867 were having a "rough time of it" in the process of meeting what were considered to be the political requirements at Red River in 1870. There were other practical considerations which further complicated the legal difficulties, for beyond a doubt Canadian statesmen had already set their minds upon two or three great constructive national projects, and were determined to allow no abstract constitutional principles to stand in their way.

[1] "There was a very strong opinion in England and also here—I believe it was shared by Mr. Blake—that we had no right . . .

"The interpretation given by the Judicial Committee of the Privy Council upon section 109 . . . has always been favourable to the provinces, and has gone very far in the direction of maintaining that all public lands . . . once the province is created fell under provincial control. . . .

"By common understanding of section 109 and the interpretation put upon that section since our constitutional questions have arisen, it would seem to be evident that public lands, by the very terms of the constitution, belonged to the provinces the moment they entered confederation, and I see no reason for departing from that rule in regard to the province created out of a portion of the North-West Territories."—Hon. Mr. Monk, *Hansard*, 1905, pp. 3072 *et seq.*

[2] Mr. Bram Thompson. See *Canada's Suzerainty over the West*, reprinted from the *Canadian Law Times* of August and September, 1919. Mr. Thompson contends that the Privy Council would find the sections in the Alberta and Saskatchewan Acts providing for federal administration of public lands *ultra vires* of the federal government, and that even section 30 of the Manitoba Act, despite the validation of that measure by the B.N.A. Act of 1871 "for all purposes whatsoever", could be declared *ultra vires* by reason of conflict with the fundamental principles of the B.N.A. Act of 1867.

The very conditions of the surrender of Hudson's Bay chartered rights in Rupert's Land to the Crown, and particularly the reservation of the "one-twentieth part" of each township "within the Fertile Belt" for the Company, necessitated a measure of federal control. It is clear that no regard for "provincial rights" in Manitoba was to be allowed to complicate the obligations of the Dominion to the Hudson's Bay Company. Sir John A. Macdonald, in fact, did not hesitate to avow the intention of obtaining from the lands of the West "repayment of the disbursement of the £300,000," despite the fact that this sum was raised by public loan, to be paid off only in 1904 by all the provinces of Canada, Manitoba included[1]: "The expense would be defrayed by that means instead of being charged against the people of the Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick. That could be done, however, only by carrying out that policy of keeping the control of the lands of the country, and . . . they had determined to do so." [2]

A second practical consideration was the need of rapid immigration and the fear that the new province, then preponderantly French and *Métis*, would obstruct this policy if granted full control of the public lands. "The land could not be handed over to them . . . It would be injudicious to have a large Province which . . . might interfere with the general policy of the Government . . . Besides the land legislation of the Province might be obstructive to immigration." [3]

And finally the great project of a transcontinental railway was already beginning to engross the attention of the federal government. There can be no doubt that this was very prominently in mind at the time of the transfer. At the Convention of February, 1870, when Commissioner Smith was asked to reply to the demand for "full control of all the public land" for the "Local Legislature" he qualified his reply that "full and substantial justice will be done" by pleading ignorance "of the country and of the extent to which this concession might affect public works, etc." [4]

[1] *Statement of Proceedings taken by the Lords Commissioners of Her Majesty's Treasury to give effect to the Guarantee of a loan for the £300,000 authorised by the Act 32 & 33, Vic., c. 101.* June 28, 1870. Cf. also *Can. Sessional Papers*, 1880, Vol. X, Paper No. 75 and Chester Martin, "*The Natural Resources Question*", p. 35.

[2] *Recent Disturbances in the Red River Settlement*, 1870, pp. 132, 143, 146, etc.

[3] Sir John A. Macdonald on the *Manitoba Bill.*

[4] *The New Nation*, Feb. 11, 1870.

Sir John A. Macdonald, at the debate on the Manitoba Bill, declared frankly that "the land could not be handed over to them; it was of the greatest importance to the Dominion to have possession of it, for the Pacific Railway must be built by means of the land through which it had to pass." Sir George Cartier stated this view even more bluntly when he announced that the public lands of the West "had been given up for nothing": "It must be in the contemplation of the Members of the House that these could be used for the construction of the British Pacific Railway." [1]

As late as 1884, the Canadian Privy Council enunciated the policy with regard to the Canadian Pacific Railway that "the expenditure in construction and in cash subsidy may be regarded as an advance, to be repaid from the lands." [2]

For all these reasons, therefore, legal and otherwise, it was determined to apply for Imperial validation for the Manitoba Act "as if it had been an Imperial statute." The memorandum to the Canadian Privy Council was drawn up by Sir John A. Macdonald,[3] and though the draft bill underwent several very significant changes before it eventually passed the Imperial Parliament, the Manitoba Act was eventually confirmed "for all purposes whatsoever" by the British North America Act of 1871. It is interesting to note that the suggestion in the draft bill (section 6) that "any Act of the said Parliament hereafter establishing a Province as aforesaid shall have effect as if it had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland" *does not appear in the final Act*, and the omission would seem to be very significant in its bearings upon the Alberta and Saskatchewan Acts of 1905. Otherwise, however, the B.N.A. Act of 1871 seems to have been devised as a complete and perfunctory *carte blanche* for the irregularities attending the transfer. It thus came to pass that the administration of the public lands of Manitoba "by the Government of Canada for the purposes of the Dominion," devised by Canada not only without the consent or knowledge of the inhabitants of the new province, but in defiance of every expression of opinion, both English-speaking and French, in every "list of rights" drawn up during the transfer, was validated by

[1] *Recent Disturbances in the Red River Settlement*, 1870, p. 139.
[2] *Can. Sessional Papers*, 1885, Vol. 12, Paper No. 61.
[3] *Can. Sessional Papers*, 1871, Vol. 5, Paper No. 20.

Imperial enactment drafted at Ottawa "for all purposes whatsoever."

A comparison of the three series of difficulties outlined above would afford an alluring opportunity for speculations which cannot be indulged here. Of the three, the constitutional difficulty at the beginning—apparently the most formidable at the time—was surmounted in fact with the least violence to good sense and normal British constitutional procedure. The mischief which has arisen with regard to it has arisen not from the facts of the case nor from the principles observed in the transfer, but from loose and conveniently specious fictions since employed to justify a course of action already determined upon for other reasons. The second series of difficulties, culminating in one of the most inglorious political episodes of Canadian history, has had even more pernicious practical results. The events of 1869-70 have sown Manitoban and even Canadian history with dragons' teeth yielding ever since a truly prolific harvest of racial and religious controversy.

There is a sense in which the solution sought for the third series of difficulties has been equally far-reaching in its ultimate results, for as already suggested, the B.N.A. Act of 1871 has been held to have changed, upon the statute books at least, not only the amplitude but the very nature of the Canadian Confederation. By the original B.N.A. Act of 1867 the Dominion of Canada was a federation of equals, each province being "supreme" in certain respects, "directly under the Crown as its head." By the B.N.A. of 1871 (validating "for all purposes whatsoever" the Manitoba Act and the Act for the Temporary Government of Rupert's Land and the North-Western Territory when united with Canada), the Dominion of Canada was transformed from a federation of equals into an Empire. Manitoba, a province in name, was debased to "colonial" status ("for the purposes of the Dominion") in one at least of the essentials of provincial self-government. The territories beyond were placed beneath the imperial control of the Canadian parliament, with an organization of executive government almost as primitive as that of Canada under the Quebec Act of 1774. It was not until 1875 that the North-West Territories Act provided a constitution for the North-West Territories similar to that embodied in the Constitutional Act of 1791. It was not until 1888 and 1894 that the principles and practice of responsible government began to appear; and even with the

advent of autonomy and (in name) provincial status in 1905, the imperial parliament of Canada took the responsibility of withholding the firstfruits of that responsible government in the determination to retain the control of the natural resources of the prairie provinces (as provided in the Alberta and Saskatchewan Acts of the federal parliament) "for the purposes of Canada." If the B.N.A Act of 1871 has indeed authorized, in the words of Lord Halsbury, this "utmost discretion of enactment," it has made it necessary for the prairie provinces to contend for some of the primitive rights of self-government to which Upper Canada aspired three generations ago in the contest for responsible government.

One other reflection may not be out of place in conclusion. The rectification of these irregularities would seem to require an Imperial Act to amend the B.N.A. Act of 1871.[1] In view of this fact, the recent proposal to secure, for the Dominion, powers to amend the B.N.A. Acts, "with the consent of the Provincial Legislatures," bears an unfortunate resemblance to the abortive proposal in the draft bill of 1871 to endow the federal parliament with powers of legislation for new provinces "as if it had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." The acquiescence of the three "colonial" provinces is scarcely to be expected without the equitable removal *first* of provincial disabilities imposed in 1870, 1871, and 1905.[2] In fact, it would seem to be in order to complete Confederation within by restoring the just and original principles of 1867 as a *sine qua non* of consummation without by the assumption of complete autonomy among the autonomous nations of the British Empire.

CHESTER MARTIN

[1] This would seem to be true even with regard to Alberta and Saskatchewan by the terms of the B.N.A. Act of 1871, section 6; though Sir Robert Borden would seem to regard a federal Act "with the consent of the Provincial legislature" as sufficient.—*Hansard*, 1905, p. 1466.

[2] "Any other course would seem (*pace* the attitude of the other provinces at the Conference of November, 1918) to invite the postponement of the settlement of the 'Natural Resources Question' for this province to the Greek Calends." See Chester Martin, "*Natural Resources Question*", pp. 108, note; 112; 113, etc.